IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

1) D.B. CIVIL WRIT PETITION NO.20/1993.
Satya Veer Singh
Vs.
Rajasthan Housing Board.

2) D.B. SPECIAL APPEAL (CIVIL) NO.64/1993.
R.K. Bhakar
Vs.
K.K. Dixit and ors.

3) D.B. SPECIAL APPEAL (CIVIL) NO.67/1993.
Chandra Mohan Saharan and ors.
Vs.
K.K. Dixit and ors.

4) D.B.CIVIL SPECIAL APPEAL (W) NO.528/1993.
R.K.Bhakar
Vs.
K.K. Dixit and ors.

5) D.B. CIVIL WRIT PETITION NO.7063/1993.
Ranjeet Singh Godara and ors.
Vs.
Rajasthan Housing Board and ors.

6) D.B.CIVIL SPECIAL APPEAL (W) NO.497/1994.
Faheem Ullah Khan
Vs.
Rajasthan Housing Board.

7) D.B.CIVIL SPECIAL APPEAL (W) NO.689/1996.
Ramesh Chand Jain and ors.
Vs.
Rajasthan Housing Board.

Date of Judgment : 25/5/2007.

**QUORUM**

**HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA**
**HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ**

**REPORTABLE**

**Advocates who appeared in these cases:-**

Shri Marudhar Mridul Sr.Advocate with
Shri Sanjay Pareek for appellants in D.B. Special Appeal (Civil) No.67/1993 & D.B. Civil Writ Petition No.7063/1993.

Shri Mahendra Singh for appellants in D.B. Civil Special Appeal (W) No.528/1993 and D.B. Special Appeal (Civil) No.64/1993 and for Rajasthan Housing Board in D.B. Civil Special Appeal (W) No.689/1996.
Shri Rajendra Soni for appellants in D.B. Civil Special Appeal (W) No.689/1996.

Shri R.D. Rastogi for appellant in D.B. Civil Special Appeal (W) No.497/1994.

Shri Prahlad Singh for petitioner in D.B. Civil Writ Petition No.20/1993 and private respondents in D.B.

Special Appeal (Civil) No.67/1993.
Shri Bajrang Lal Sharma, Sr.Advocate with
Shri Rajendra Prasad and
Ms. Raj Sharma for private respondents in D.B. Civil Writ Petition No.7063/1993.

Shri J.K. Singhi and Shri R.L. Jain for Rajasthan Housing Board in all cases except in D.B. Civil Special Appeal (W) No.689/1996.

Shri Mahendra Shah for private respondents in D.B. Civil Special Appeal (W) No.497/1994.

Shri Akhil Simlote for private respondents in D.B. Civil Special Appeal (W) No.689/1996.

Shri Sandeep Saxena for private respondents in D.B. Special Appeal (Civil) Nos.67/1993 and 64/1993.

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**BY THE COURT**:**(Per Hon'ble Mohammad Rafiq J.)**

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Yearning for advancement in career, desire for outsmarting others and zeal to steal march over one another, has driven 'diploma holder' and 'degree holder' engineers, a potential class of employees into filing these writ petitions and special appeals, who have been perennially contributing to

ever increasing litigation related to service jurisprudence in this country.

Number of legal questions have been raised in all these matters for determination by this Court and though founded on different grounds but since all of them centres around the dispute of seniority amongst the Project Engineers (Junior) of Rajasthan Housing Board, therefore, these matters, five of which are appeals filed against different judgments passed by the single benches of this Court and two are writ petitions, were heard together and are being disposed of by this common judgment.

## FACTS OF THE MATTER

**Special Appeal Nos.67/1993, 64/1993 & 528/1993:-**

While Special Appeal Nos.67/1993 and 528/1994 have been filed against the common judgment dated 7/7/1993 passed by the learned Single Judge in the writ petition filed by K.K. Dixit and ors., Special Appeal No.64/1993 has arisen out of the order passed

by the learned Single Judge in the petition seeking review of the judgment rendered in the aforesaid writ petition.

Dispute arose when the Rajasthan Housing Board passed the Resolution No.6 dated 17/4/1979 wherein it was decided that the diploma holders upon acquiring the qualification of 'AMIE', would be entitled to count their earlier experience prior to acquiring such qualification in the ratio of 7 : 3 years only. The Rajasthan Housing Board in its 124$^{th}$ Meeting at Agenda Item No.12$^{th}$ added the Note below the 'Schedule Technical' of the Regulations of 1976 which provided for screening of Project Engineers (Junior) appointed on ad-hoc/officiating/ urgent temporary basis before 1/4/1986 with the stipulation that their inter-se seniority shall be determined on the basis of length of continued service and that they shall remain junior to those appointed in the prescribed manner uptill then as per Regulations of 1976.

Resolution of the Board dated 17/4/1979 was challenged by K.K. Dixit and eight ors. in the writ petition on the premise that when the Project Engineers (Junior) were initially appointed on ad-hoc temporary basis, they were holding the qualification of Diploma only. Later on, they acquired the qualification of 'AMIE' which is equivalent to degree. Their claim in the writ petition was that they are entitled to count the experience of services rendered by them prior to their screening and consequential regularisation in service. They prayed that the respondent-Board be directed to issue separate seniority lists of Project Engineers (Junior) for degree and diploma holders on the basis of regular recruitment in the cadre and the Project Engineers (Junior) be regularised against the respective quota of diploma holders and degree holders and further that their cases be considered accordingly for promotion. In substance, they insisted on counting their service prior to acquiring the qualification of 'AMIE' both for eligibility and seniority.

Learned Single Judge in his judgment held that the period of service rendered by the petitioners on the post of Project Engineer (Junior) on ad-hoc basis prior to screening cannot be taken into consideration for the purpose of eligibility of promotion. The petitioners, thereafter, filed a petition seeking review of the said judgment on the premise that some of the arguments raised by them have not been considered while deciding the writ petitions, especially the prayer for preparation of separate seniority list of degree and diploma holders Project Engineers (Junior). The learned Single Judge allowed the review petition and directed the Rajasthan Housing Board to prepare separate seniority lists of degree and diploma holders Project Engineers (Junior) and further directed that such of the diploma holders who acquire the qualification of 'AMIE' shall be placed below all degree holders Project Engineers (Junior) in that year.

**DBCSA(W) No.497/1994:-**

This special appeal has been filed by Faheem Ullah Khan against the judgment of the learned Single Judge whereby writ petition filed by him was dismissed. He had challenged the promotion of S.K. Singhal and Kalyan Prasad on the post of Project Engineer (Senior) in the quota of the year 1983-84. According to him, S.K. Singhal joined service on 23/10/1979 as Project Engineer (Junior) and was later promoted on the post of Project Engineer (Senior) upon his acquiring the qualification of 'AMIE' on 28/8/1982. He completed the requisite period of three years' experience on 28/8/1985 so as to become eligible for promotion on the post of Project Engineer (Senior) against the vacancies of the year 1985-86. Even otherwise, as per the policy of the Board, the experience being adjustable in the ratio of 7 : 3 out of the total experience which he was possessing prior to obtaining the qualification of 'AMIE' on 3/7/1984, therefore, even if proportionate experience of the service from

23/10/1979 to 28/8/1985 being taken into account, he could have been entitled to count only 14 months as experience and at any rate he could not acquire eligibility for promotion in June, 1984 and his promotion against the quota of the year 1983-84 was therefore, illegal. Regarding promotion of Kalyan Prasad, his objection was that he was appointed as Project Engineer (Junior) on 24/4/1982 and joined the service on 10/5/1982 as diploma holders. He passed the qualification of 'AMIE' on 3/3/1984. He became eligible for promotion on the post of Project Engineer (Junior) only in the year 1987-88. Hence, period of his experience of three years is countable only after he acquired the qualification of 'AMIE' in the year 1984. The learned Single Judge vide judgment dated 21/4/1994 rejected the writ petition holding that countable period of service with reference to the provisions contained in provisions of Regulations of 1976 need not necessarily be only subsequent to the acquisition of qualification of 'AMIE' and even earlier period would be countable.

**DBCSA(W) No.689/1996:-**

Shri Rameshwar Dayal Gupta and four others filed writ petition on 19/4/1996 inter-alia with the prayer that the Board be directed to prepare a final seniority list of Project Engineer (Senior) as per clause 11 of the Regulations of 1976 by placing them all above those who were appointed in the cadre of Project Engineer (Senior) by way of screening vide order dated 21/11/1987 and the Board be further directed to consider their case for promotion on the post of Project Engineer (Senior) in accordance with the relevant rules. Grievance of the petitioners was that such of the ad-hoc Project Engineers (Junior) who were screened and made members of the service were liable to be placed below them in seniority because at that time the petitioners were already appointed by regular mode of selection in the cadre and further that such Project Engineers (Junior) were entitled to be considered eligible for promotion only upon their completing the period of three years subsequent to their screening and

regularisation. Learned Single Judge however disposed of the writ petition with certain directions but without giving any relief to the petitioners who have all in this appeal raised almost the same arguments again which were raised but not accepted.

**DBCWP NO.7063/1993:-**

This writ petition has been filed jointly by Ranjeet Singh Godara and T.C. Sevta who were originally appointed on the post of Project Engineer (Junior) diploma holders on ad-hoc basis and were later screened and appointed as such on regular basis. Ranjeet Singh Goadara was initially appointed on ad-hoc basis on 13/10/1982 and later again on 30/7/1984 and thereafter screened and appointed on regular basis w.e.f. 18/5/1987 vide order dated 19/5/1987. T.C. Sevta, petitioner No.2 was also appointed as Project Engineer (Junior) diploma holder on regular basis vide order dated 24/4/1982. He later acquired the qualification of 'AMIE' in the year 1989. They were both promoted as Project

Engineer (Senior) though on ad-hoc basis vide order dated 9/1/1992.

The Rajasthan Housing Board in its 124th meeting passed Resolution No.124.12 on 28/4/1986 thereby adding a Note below 'Schedule Technical' so as to provide for screening of 48 ad-hoc appointees. Pursuant thereto a letter was sent to the Government on 28/5/1986 for approval of the aforesaid Note followed by a reminder on 6/10/1986. The said Note was acted upon and screening was conducted on 17/2/1987 and 10/3/1987 and thereafter the Board in its meeting held on 18/4/1987 vide Resolution No.131.16 approved the screening of such candidates. Consequential order of the regular appointment was passed on 19/5/1987.

Claim of the petitioners was that the respondents-K.K. Saraswat and R.K. Mishra who, though degree holders, were also initially appointed on ad-hoc basis and were subjected to screening alongwith the petitioners. Their names in the list

of screened candidates were shown below that of the petitioners. They have challenged the decision of the Board to assign seniority to the Project Engineers (Junior) diploma holders acquiring 'AMIE' below existing degree holders in that cadre and quota. Alternatively, the petitioners have also challenged the decision of the Board to treat seven years experience of the diploma holders as equivalent to three years experience of degree holders. They have also challenged Clause (3)(d) of the Note inserted below the Schedule Technical of the Regulations of 1976 which upon their screening make them junior to those already appointed on regular basis.

**DBCWP No.20/1993:-**

This writ petition has been filed by Satyaveer Singh who has challenged the action of the respondent-Board in not considring experience of his ad-hoc service prior to acquiring 'AMIE' for the purpose of promotion to the post of Project Engineer

(Senior). He was initially appointed on the post of Project Engineer (Junior) on ad-hoc basis on 26/5/1983 and was later appointed on the said post by direct recruitment after regular selection vide order dated 11/12/1987. Later, he acquired the qualfication of 'AMIE' on 9/10/2001. According to him, the moment he acquired such qualification, he became entitled for promotion to the post of Project Engineer (Senior) because he had already completed requisite period of three years experience earlier then acquiring the qualification of 'AMIE' He has also challenged the decision of the respondent-Board to treat seven years experience of the diploma holders as equivalent to three years experience of degree holders.

**QUESTIONS FOR DETERMINATION**:-

Questions which arise for our determination against the backdrop of the controversy recapitulated above can be summarised thus:-

(i) Whether the Project Engineer (Junior) who were initially appointed on ad-hoc /officiating /urgent temporary basis, upon being screened and made members of service with reference to clause 3 of the Note below 'Schedule Technical' of the Rajasthan Housing Board Employees Condition of Recruitment and Promotion Regulations, 1976 are entitled to count the period of service rendered in that capacity for the purpose of seniority and experience for eligibility of promotion to the post of Project Engineer (Senior) as provided for in column No.6 of Sr.No.2 in the 'Schedule Technical' of Regulations of 1976?

(ii) Whether the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of 'AMIE', are entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of “three years total experience of service“ for promotion to the post of Project Engineer (Senior) as provided for in

column No.6 of Sr.No.2 of 'Schedule Technical' of Regulations of 1976?

(iii) Whether according to the Regulations of 1976 the diploma holders Project Engineers (Junior) on acquiring the qualification of 'AMIE' are liable to be placed in the seniority list of Project Engineers (Junior) below degree holders available as on the date of their acquiring such qualification and further whether according to the Regulations of 1976, a seperate seniority list of Project Engineers (Junior) based on their educational qualification, viz.- degree and diploma, is required to be maintained?

We have had the benifit of hearing battery of enlightened lawyers representing the rival parties and perused the cited precedents, relevant rules and the material available on record.

**RELEVANT RULES**:-

Before we proceed to notice the rival submissions, it would be apposite to extract relevant provisions relating to promotion, seniority and screening etc. Clause 9 of the Regulations of 1976 which pertains to promotion provides as under:-

"(9) (A) Promotion:

In respect of first promotion to higher post, promotion of eligible person shall be made on the basis of seniority-cum-merit. Second promotion shall be made on the basis of merit and seniority-cum-merit in the promotion of "50:50" (120.12).

(B) Seniority lists for each category of employees will be prepared and maintained.

(C) Merit of employees will be judged on the following basis:-

(I) Capacity to do hard work with sincerity, honesty, objectivity & result orientation.

(II) Originality of thinking to increase productivity and efficiency in the organisation.

(III) Sense of alertness combined with courage, initiative and decision making power, tact and

organising capacity.

(IV) Previous record of service.

(D) While considering promotions on the basis of merit with due regard to seniority, list of senior most employees eligible for promotion not exceeding five times the number of vacancies will be taken into consideration.

(E) The Departmental Promotion Committee to consider the cases of promotion of employees shall consist of Chairman, two members of the Board, Housing Commissioner and Secretary of the Board in case of officers. For other categories of staff a committee appointed by Chairman shall consider the cases of promotion.“

Clause 10 provides for determination of

seniority which is reproduced hereinbelow:-

> “10) Seniority :
> Amongst the persons recruited in the same year, the promotees will rank senior to those who will be appointed by direct recruitment. Amongst the promotees those who are appointed on the basis of seniority cum merit will rank senior to those who are appointed on the basis of merit with due regard to seniority. The interse seniority of those appointed on the

basis of merit will be in accordance with their relative seniority in the lower cadre.“

Relevant entry at S.Nos.1 and 2 in the 'Schedule Technical' and the note therebelow is reproduced hereunder:-

| | | | | | |
|---|---|---|---|---|---|
| **1** | **Project Engineer (Jr.)** | **97% by direct recruitment (144.4)**<br><br>**3% by Board Employee (144.4)** | **Must hold a degree or diploma in Civil Engineering preferably in Ist Division. Preference will be given to persons having two years experience in design and construction of building.**<br><br>**1. Required Qualification same and by in employee with Board Permission.**<br><br>**2. He should not more than 45 years in age.** | | |
| **2** | **Project Engineer (Sr.)** | **Direct 50%** | **Must hold a degree in Civil Engineering in 1 Division and must have at least one year's experience in design and construction of building.** | **Project Engineer (Jr.).** | **Post to be filled in by promotion from amongst the P.E. Jr.'s who are degree hlders with 3 years total experience of service.**<br><br>**Post to be filled in by promotion from P.E. Jr.'s who are diploma holders with 7 years total experience of** |

Note:-

(1) Where suitable candidates are not available either by direct recruitment or by promotion, the Board will take suitable officers / officials on deputation.

(2) All other things being equal, preference will be given to the candidates who are already working in the organisation.

(3) The appointment of Junior Project Engineers made by the competent authority on adhoc / officiating urgent temporary basis before 1-4-86 and continuously working against the sanctioned vacant post can be regularised by Screening Committee appointed by the Board.

The suitability for the post held by such persons shall be screened by the Screening Committee provided they possess the qualifications prescribed in the RHB Employees Conditions of Recruitment and Promotion Regulations, 1976 either on direct recruitment or for promotion on the basis of which the persons were selected for adhoc /officiating urgent temporary appointment. This provision shall be subject to the following conditions namely:-

(a) That a person appointed on adhoc basis shall not be entitled to screening for a post higher than to which he was initially appointed, if a person senior or him or lower post who fulfilled, qualifications prescribed for the post was either not given such adhoc appointment or is not entitled

to screening under this revised seniority of adhoc employees for this purpose shall be according to length of continuous service on a Post.

(b) That the committee appointed under this revised for adjudging suitability by screening either as an exception of general methods of recruitments or as initial constitution of service, may ex-gratia recommend, if any of the employee with more than three years of service on a post for which he is to be screened is not adjudged suitable and if, thereafter has no right to be appointed on lower post.

(c) That the seniority interse of persons appointed under this provision shall be determined on the basis of their length of continuous service.

(d) That the persons appointed under the process of screening shall rank junior to those appointed in accordance with the prescribed manner as per Rajasthan Housing Board Rules. “(approval awaited 124.12).“

**ARGUMENTS OF THE APPELLANTS/PETITIONERS:-**

**Shri Marudhar Mridul**, learned Senior Advocate assisted by Shri Sanjay Pareek for petitioners-Ranjeet Singh Godara and ors. and appellants-Chandra Mohan Saharan and ors. argued that use of the word “total“ in the 'Schedule Technical' is of great

significance which reflects intention of the rule making authority to count entire experience irrespective of the fact whether such experience is acquired by a Project Engineer (Jr.) while he was holding diploma or a degree. Clause 9(a) of the Regulations of 1976 gives a complete picture having no lacunae, inconsistency or anomaly. There does not therefore arise any occasion for the Board to issue general instructions regarding promotion and eligibility therefor because clause 12 of the Regulations of 1976 empowers the Board to do so only in the event of any lacunae, inconsistency or anomaly being discovered in implementing or giving effect to the Regulations of 1976. On the contrary, the instructions which have been issued by the Board to count experience for promotion in the ratio of 7 : 3 would be hit by clause 12 according to which such general instructions cannot be inconsistent with the Regulations of 1976. It was therefore, argued that the resolution of the Board passed on 17/4/1979 being in conflict with the provisions contained in clause 9 read with 'Schedule

Technical' of the Regulations of 1976 is ultravires of the Regulations of 1976 and is therefore liable to be struck down being void ab-initio. Only consequence of diploma holder acquiring degree would be that his claim for promotion would shift from one quota (30%) to another (20%) and the required eligibility of experience would undergo a favourable change. While earlier he was required to possess seven years total experience of service so as to be eligible for promotion, now, he would be required to have only three years total experience of service. It was further argued that the said Resolution No.6 dated 17/4/1979, even otherwise, cannot be applied because the same has not been approved by the State Government as yet which according to Section 53 of the Rajasthan Housing Board Act, 1970 is a mandatory requirement. After implementation of the said resolution, the diploma holder who acquire degree would get transposed into the seniority list of degree holders Project Engineers (Junior) for the purpose of promotion and their names will be placed at the bottom below all pre-existing degree holders

of the year in which he obtained degree and in this manner his entire earlier service as Project Engineer (Jr.) would be rendered inconsequential. Aforesaid resolution is clumsily and vaguely worded besides being contrary to clauses 9 and 10 of the Regulations of 1976 and the Note below 'Schedule Technical'. There is no reason or rhyme for not counting experience of diploma holder which he gains prior to acquiring the degree. Even otherwise, there is no qualitative or quantitative difference between the experience which the employees in these two categories acquire because both of them discharge same duties on the post of Project Engineer (Jr.) which are inter-changeable. This would amount to treating equals unequally and, therefore, such an action would be discriminatory being violative of Articles 14 and 16 of the Constitution of India. It was argued that the consequence of regularisation of service on the basis of screening takes effect from the date of initial appointment. Clause 3(d) of the Note below 'Schedule Technical' of the Regulations denies the Project Engineer (Jr.) upon being made

regular seniority of their earlier period and therefore, this would also be hit by Articles 14 and 16 of the Constituion of India. It is, therefore, prayed that writ petition be allowed.

**Shri Mahendra Singh**, learned counsel appearing for the appellants in DB Civil Special Appeal Nos.528/1993 and DB Special Appeal (Civil) No.64/1993 argued that the seniority is an attribute of service which flows out of appointment in accordance with law. Eligiblity is an altogether different concept and takes within its purview various factors including qualifications, age, experience etc. While in the context of direct recruitment, experience and qualifications are those acquired prior to appointment. A distinction has to be however made in the case of promotion. The rule making authority may prescribe total experience to be counted for the purpose of eligibility, whether acquired before or after apointment on the feeder post. The issue will have to be therefore necessarily examined on the basis and in the light,

of the rules on the subject. The prescription under the Regulations specifically Schedule in the “total experience“ clearly show the intention of the rule making authority that total experience irrespective of the nature of appointment and qualification held by the incumbent is required to be counted for the purpose of eligibility of promotion. Learned Single Judge however in the impugned-judgment on his own sought to add the word “regular“ whereas the words used in the rules are “total experience“. It is argued that the direction given by the learned Single Judge for preparation of separate seniority list for each category of degree holders and diploma holders is contrary to clause 10 of the Regulations of 1976. Both, diploma holders and degree holders are equally eligible for appointment as Project Engineer (Jr.). Regulations of 1976 neither prescribe quota nor preference for degree holders. Both degree holders and diploma holders face a common selection. Diploma holder performing better gets a higher placement in the merit for appointment. Whenever therefore, vacancies become

available, the zone of consideration would need to be prepared from a common seniority list. It was argued that distinction of Project Engineer (Jr.) on the basis of qualification is made only at the time of promotion for the purpose of considering their case against different quotas. There is however no such distinction at the time of initial recruitment. In regard to seniority list dated 11/8/1989 (Ann.5) filed with the review petition by K.K. Dixit, it was argued that this was the common seniority list of both, diploma holders and degree holders. There was therefore no justification for the learned Single Judge in directing that those imcumbents acquiring qualification of 'AMIE' should be relegated at the bottom below the pre-existing degree holders of that year and separate seniority list of degree holders and diploma holders should be prepared. Direction given by the learned Single Judge is contrary to clause 9 of the Regulations. Besides, Sr.No.1 of the 'Schedule Technical' of Regulations of 1976 also does not make any distinction for the purpose of either direct recruitment or eligibility of

promotion between the degree holders and diploma holders. Impugned-judgment being contrary to the spirit and intention of the rules is therefore liable to be set-aside. Shri Mahendra Singh has relied on the judgments of the Hon'ble Supreme Court in 2000(4) SCC 30 : AK Raghumani Singh Vs. Gopal Chandra Nath, 1988(5) SCC 305 : Scientific Adviser to Raksha Mantralaya Vs. VM Joseph, 1997(3) SCC 118 : Vijay Singh Deora Vs. State of Rajasthan, 2001(3) SCC 174 : State of Rajasthan Vs. Anil Kumar, 2004(3) RLR 758 : State of Rajasthan Vs. Farooq Ahmed, 1994 Supp (2) SCC 44 : Vinodanand Yadav Vs. State of Bihar, 2003(5) SCC 669 : Government of Maharashtra Vs. Deokar's Distillery and AIR 2006 SC 1806 : Secretary of State Karnataka Vs. Umadevi and ors.

**Shri Prahlad Singh**, learned counsel appearing for petitioner Satyaveer Singh in D.B. Civil Writ Petition No.20/1993 and private respondents in D.B. Special Appeal (Civil) No.67/1993 argued that action of the respondents in not counting experience gained by the petitioner prior to his acquiring

qualification of 'AMIE' is ex-facie illegal, arbitrary and unreasonable and, therefore, violative of Articles 14 and 16 of the Constitution of India. There is no difference between the experience gained by degree holders and diploma holders because there is no difference in their duties and responsibilities which are identical and the posts are inter-changeable and inter-transferable. Counsel further argued that it may be possible that a particular post is held by degree holder and soon after his transfer, he may be replaced by diploma holder and, thereafter, degree holder can be posted on the post occupied by the diploma holder. The rule making authority has purposely used the expression 'total experience of service' and when the rules on the subject are clear, it has to be given effect to irrespective of consequences. Regulations of 1976 nowhere envisage that three years experience must be after passing the degree qualification of 'AMIE' It was argued that the petitioner has been since beginning discharging the duties of Project Engineer (Jr.) even when he was appointed on ad-hoc/temporary

basis. There was no difference in the mode of payment of salary/remuneration which could make any difference to the kind of experience acquired by the incumbent. Shri Prahlad Singh has relied on Dharam Vir Vs. State of Rajasthan and another : WLC 1992(2) 297. Learned counsel therefore prayed that the action of the respodnents in not considering the experience gained by the petitioner prior to his acquiring qualification of 'AMIE' on 9/10/1991 for promotion to the post of Project Engineer (Senior) be declared illegal and they may be directed to consider the case of the petitioner for promotion treating him eligible for promotion soon upon his completing three years experience from the date of his initial appointment.

**Shri R.D. Rastogi**, learned counsel for the appellant in D.B. Civil Special Appeal No.497/1994 filed by Faheemullah Khan argued that the learned Single failed to comprehend the intetnion of the rule making authority. The learned Single Judge could not appreciate that the Board itself decided

to count seven years' experience of diploma holders as equivalent to three years' experience of degree holders thereby safeguarding the interest of those diploma holders who later acquired the qualification of 'AMIE'. Intention of the rule making authority was thus supplemented in subsequent decesion of the Board that such experience of three years would be countable from the date the diploma holders acquire the qualification of 'AMIE' It was argued that the intendment of the rule specially the 'Schedule Technical' to the Regulations of 1976 is that service of a degree holder should be counted from the date he acquires degree of graduation and, therefore, the expression “three years“ and “total experience“ have to be given correct meaning. Shri Rastogi further argued that if the rule making authority did not want to count the experience anterior to the date of diploma holders acquiring the qualification of 'AMIE' /Degree, the rules have to be given effect to on the basis of the plain meaning of the language used therein and an interpretatin which does not flow from such language

cannot be ascribed thereto on the basis of supposed intention of the rule making authority. It was argued that S.K. Jindal and Kalyan Prasad both were wrongly shown senior to the petitioner on the post of Project Engineer (Sr.), though both of them acquired the qualification of 'AMIE' only on 28/8/1982 and 3/3/1994, respectively, therefore, they did not complete the requisite experience of three years and therefore, they have been wrongly granted the promotion in preference to the petitioner. It was therefore prayed that the impugned order dated 21/4/1994 may be set-aside.

**Shri Rajendra Soni**, learned counsel appearing for the appellants in D.B. Civil Special Appeal No.689/1996 (R.C. Jain and ors. Vs. Raj.Housing Board and ors.) argued that the judgment rendered by the learned Single Bench in K.K. Dixit's case on 4/7/1993 is perfectly valid. It has rightly been held that ad-hoc services rendered as Project Engineers (Jr.) on the basis of appointment given on stray applications without making appointment by

regular mode of selection and providing opportunity to all eligible candidates to compete against such vacancies can neither be considered for the purpose of seniority nor as experience for eligibility of promotion. He argued that the seniority on the post of Project Engineer (Sr.) has to be finalized correctly before promotion on the post of Resident Engineer by following the judgment in K.K. Dixit's case. Amendment incorporated in the shape of Note below 'Schedule Technical' having not received approval of the State Government as yet, cannot be acted upon for treating those screened with the add of said Note as regular employees of the Board and at any rate, they cannot be granted the benefit of their past service for the purpose of seniority. Seniority of service can only be counted from the date of regularisation subject to confirmation by the State Government. It was further argued that even according to clause (3)(d) of the aforesaid Note below 'Schedule Technical', persons who are regularised after screening are required to be treated junior to the regular persons appointed on

the post of Project Engineer (Jr.) available as on that date. Therefore, the appellants who are direct recruites as Project Engineer (Sr.) of the year 1989 are liable to be treated senior to those screened later. The appellants are thus entitled to be treated senior to those incumbents who became eligible for promotion on the post of Project Engineer (Sr.) after completion of three years regular service on the feeder post of Project Engineer (Jr.) in the year 1990. Shri Soni further argued that the persons who have been regularised through the process of screening are entitled to seniority acording to the judgment of this Court rendered in K.K. Dixit's case and accordingly considered eligible for promotion only after completing three years regular service posterior to the date of their regularisation upon screening. Shri Soni has relied on the judgments in J.T. 1993 (2) S.C. 598 : State of Rajasthan Vs. PraveenKumar and ors., AIR 1998 SC 2093 : Dr.Anuradha bodi and ors. Vs. Municipal Council of Delhi, J.T. 1998(6) S.C. 407 : P.K. Singh Vs. Bool Chand Chablani &

Ors., 1996(2) S.C.T. (S.C.) 630 : Anuradha Mukherjee Vs. U.O.I., AIR 1991 SC 284 : Keshav Chand Joshi and ors. Vs. UOI and ors., 2006(4) S.C.T. (SC) 681, State of Rajasthan Vs. Madan Singh, 2003(4) SCC 65 A.G. Srinath Vs. Govt. Of Andhra Pradesh, 2001(2) R.L.R. 149 : R.P.S.C. Vs. Dr.Narendra Kumar Mangal and ors. and AIR 2006 SC 1806 : Secretary, State of Karnataka Vs. Uma Devi.

**ARGUMENTS OF THE RESPONDENTS:-**

**Shri Bajrang Lal Sharma**, the learned Senior Advocate assisted by Shri Rajendra Prasad appearing for private respondents in D.B. Civil Writ Petition No.7063/1993 (Ranjeet Singh Godara and ors. Vs. Rajasthan Housing Board and ors.) argued that the word “experience“ as used in the Schedule of the Regulation thereby requiring degree holders to possess three years total experience of service and diploma holders seven years experience of service has been purposely qualified by the words “experience of service“. Though the said words have

not been defined under the Regulations of 1976, it is discerniable from the provisions cotained in clause 10 of the Regulations that any appointment made by the Board dehors the provisions of the Regulations framed by the Board with prior approval of the State Government in exercise of powers conferred upon it by Section 15 read with Section 53 of the Rajasthan Housing Board Act, 1970 cannot be treated as service and, therefore, period of service rendered in such a capacity by the employees cannot be legitimately counted towards total experience of service for promotion. This is so because the Regulations nowhere provides for appointment on ad-hoc/temporary basis. Ad-hoc appointments made under administrative fiat in the year 1982-83 were not made after following due process of law and after providing opportunity to all eligible candidates to compete therefor. He further argued that if the period of service rendered by such candidates does not count for their seniority, the same cannot be treated as experience of service for the purpose of promotion. Strangely enough, the Board resorted to

the process of regularisation of service of such ad-hoc employees when the process for regular selection was still continuing and those incumbents regularised by process of screening failed to qualify the regular process of selection. It was submitted that according to the provisions contained in Section 53 of the Act of 1970, the Regulations can be framed by the Board only with the previous sanction of the State Government but in the present case, the Board has not only inserted the Note below 'Schedule Technical' without obtaining previous sanction of the State Government but also acted upon the same without even waiting for its approval by the Government. Shri B.L. Sharma further argued that the aforesaid amendments has yet not received the approval of the Government therefore, it cannot be taken to be part of the Regulations of 1976. Clause 6 of the Regulations does not enumerate regularisation by the process of screening as one of the modes of recruitment and, therefore, the persons who have been regularised dehors the rules cannnot be treated as members of service. There was

therefore also no question of the service rendered by them in that capacity to be counted for the purpose of seniority or eligibility for promotion. It was argued that Hon'ble Supreme Court in catena of judgments has held that service rendered on ad-hoc basis or by a stop gap arrangement on the basis of appointment made without following procedure prescribed for recruitment under the relevant rules, cannot be considered for the purpose of seniority and promotion. Shri B.L. Sharma in this connection mainly relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Secretary State of Karnataka and others Vs. Umadevi and ors. reported in (2006)4 SCC 1. He has also placed reliance upon series of other judgments of the Supreme Court in (2006) 1 SCC 667 : State of U.P. Vs. Neeraj Awasthi, (2006) 6 SCC 558 : K.Madlaimuthu and anr. Vs. State of Tamil Nadu and ors., (1993) (Suppl.) 3 SCC 425 : G.S. Venkat Reddy Vs. Government of Andhra Pradesh, AIR 1995 SC 586 : Vs. Srinivasa Reddy and ors. Vs. Government of Andhra Pradesh and ors., AIR 1991 SC 284: Keshav

Chandra Joshi Vs. Union of India and ors., AIR 1987 SC 424 : Ashok Gulati Vs. B.S. Jain, (1999) 1 SCC 278 : U.P. Secretariat U.D.A. Association Vs. State of U.P. and ors., (2006) 10 SCC 346 : Uttaranchal Forest Rangers Assn. Vs. State of U.P. And ors., (2006) 4 Service Cases Today 589 : State of Rajasthan Vs. Madan Singh, AIR 1998 SC 2093 : Dr. Anuradha Bodi Vs. Municipal Corporation of Delhi, Judgment Today 1998(6) SC 407 : P.K. Singh Vs. BoolChand Chhabalani and ors., Judgment Today 1993 (2) SC 598 : State of West Bengal and ors. Vs. Ashok Nath Day and ors. And AIR 2001 SC 1792.

Shri Bajrang Lal Sharma, learned Senior Advocate argued that it is settled proposition of law that what cannot be done directly, cannot be allowed to be done by indirect means. Counting the period of ad-hoc employment to experience of service would mean that the incumbent who is even though junior from the date of his substantive appointment would become entitled to promotion immediately on the date of his regularisation by way of screening

as Project Engineer (Jr.). This would be hit by clause (9)(a) of the Regulation which provides that the first promotion to higher post shall be made on the basis of seniority-cum-merit. Classification made on the basis of educational qualification has been upheld by the Hon'ble Supreme Court to be consistent and in conformity with Articles 14 and 16 of the Constitution of India. Experience of seven years of a diploma holder has been treated as equivalent to three years experience of degree holders. Argument that on acquiring degree, diploma holders would be entitled to count service rendered by them in the past is fallacious because that would tantamount to giving retrospective effect to educational qualification at subsequent stage. Such an attempt is clearly intended to gain equivalence at a point of time when they did not actually possess equivalent qualification. Doing so would result in their being treated as degree holders without their possessing such qualification. This would amount to treating unequals as equals with retrospective effect which would be violative of

Articles 14 and 16 of the Constitution of India. In support of his this contention, Shri Bajrang Lal Sharma has placed reliance on the judgments of the Supreme Court in 1997(3) SCC 118 : Vijay Singh Deora and ors. Vs. State of Rajasthan and anr., 1993 (suppl.) SCC 425 : G.S. Venkat Reddy and ors. Vs. Govt. of A.P. and ors., AIR 1974 SC 246 : State of Gujrat Vs. C.G. Desai, 2004(3) SCC 734 : Chandravathi Vs. C.K. Saji and 2004(1) SCC 347 : Govt. of West Bengal Vs. K.K. Roy.

**Shri J.K. Singhi and Shri R.L. Jain**, learned counsel appearing in all cases for Rajasthan Housing Board except one argued that service rendered on ad-hoc /temporary basis / stop gap basis cannot be counted for the purpose of eligibility for promotion dehors the rules. Such service therefore cannot be included while counting total service within the purview of the provisions contained in 'Schedule Technical' of the Regulations of 1976. Once a diploma holder after acquiring 'AMIE' degree has switched over to the categtory of degree holder, his

services shall have to be counted as service only from the date he acquires such qualification. Only such experience which he gains after acquiring qualification of 'AMIE'/degree would be countable for the purpose of eligibility of promotion both as per the Regulations of 1976 and practice prevailing in the Board. They have placed reliance on the judgments of the Supreme Court in AIR 1992 SC 564 and AIR 2004 SC 2727. It was argued that even for the purpose of promotion, diploma holder acquiring the qualification of 'AMIE' is liable to be considered for promotion later in point of time than those who acquired the degree prior to them in point of time. Though, appointment on the post of Project Engineer (Jr.) for both, diploma holders and degree holders, is made by way of direct recruitment therefore, the seniority list for both degree holders and diploma holders is also common which is prepapred as per merit obtained by such candidates in the recruitment. For the purpose of promotion however, they are entitled to be promoted against separate quotas meant for degree holders and diploma

holders on the post of Project Engineer (Sr.) as per their respective qualification.

**Shri Mahendra Singh**, learned counsel appearing for the Rajasthan Housing Board in D.B. Civil Special Appeal (W) No.689/2006 filed by R.C. Jain and ors. argued that the seniority is an attribute of service which flows out of regular appointment. He argued that the promotions were made in the year 1987 even before the appellants entered into service of the Board in the year 1989. Such promotions are not under challenge and, therefore, promotion of incumbents made in 1987 who are not the party-respondents should not be allowed to be questioned especially in a writ petition filed with enormous delay of nine years in 1996. Even if the plea of the appeallants is accepted that the year of their promotions should be changed from 1987 to 1989 when appellants came to be promoted through D.P.C., then also, by virtue of Regulation 10 of the Regulations of 1976, the promotees would still rank senior to the appellants being the direct recruits

of the same year of selection.

**Shri Akhil Simlote**, learned counsel appearing for respondents Dinesh Chandra and O.P. Mathur in D.B. Civil Special Appeal No.689/1996 (R.C. Jain and ors. Vs. State and ors.) argued that the said respondents were already working in the Public Health and Engineering Department and Irrigation Department, respectively having been appointed on substantive basis. After they had rendered 3-4 years service, they came to be appointed in Rajasthan Housing Board vide order dated 1/1/1983. At that time, the Board was running short of Engineers due to uncertaintity about its existence. Looking to the Scheme of the Regulations and vacancy position, respondents No.3 and 4 decided to serve the Board. Their services were regularised upon screening by the order of the Board dated 19/5/1987. Both of them were degree holders and were appointed in the service of the Board on 1/1/1983. They became eligible for promotion soon upon their screening. Accordingly, they were promoted to the post of

Project Engineer (Sr.) on the recommendations made by the Departmental Promotion Committee (D.P.C.) vide order dated 21/11/1987. Experience of their earlier service cannot therefore be ignored. The appellants were in service of the Board since 1989 and, therefore, they cannot be made senior to private respondents who were promoted after screening. Question of appellants' promotion cannot be considered in a writ petition which was belatedly filed in the year 1993 whereas the vacancies were pertaining to the year 1982-83. Shri Akhil Simlote relied on the judgment of the Supreme Court in 2003 (5) SCC 604 : Bimlesh Tanwar Vs. State of Haryana and ors.

**Shri Sandeep Saxena**, learned counsel appearing for the private respondents in D.B. Special Appeal (Civil) No.67/1993 supported the judgment of the learned Single Judge dated 4/7/1993 passed in K.K. Dixit's case and argued that the writ petition and review petition in the case of K.K. Dixit have been correctly decided by the learned

Single Judge. He therefore adopted the arguments made by Shri Bajrang Lal Sharma.

**Shri Mahendra Shah**, learned counsel appearing for respondents S.K. Singhal and Kalyan Prasad in D.B. Civil Special Appeal (W) No.497/1994 (Faheem Ullah Khan Vs. Rajasthan Housing Board) argued that the learned Single Bench in the impugned-judgment dated 21/4/1994 has rightly held that a diploma holder appointed to service acquires same kind of experience which degree holder gains. Experience of duly appointed diploma holder Project Engineer (Jr.) as per the Regulations therefore, cannot be ignored altogether. He argued that if the experience of the private respondents who were though initially recruited on regular basis as Project Engineer (Jr.) on the basis of diploma but later acquired qualification of 'AMIE', is counted for eligibility of experience, the argument of the appellant about those respondents having not completed required experience of three years would be liable to be rejected. He therefore prayed that the special

appeal be dismissed.

We have given our earnest consideration to the arguments advanced by the learned counsel for the parties, respectfully gone through the rulings cited at the bar and scrutinised the materials on record.

At the outset, we would like to make it clear that although we have noticed the arguments advanced by the learned counsel for the parties but in view of the enormity of the judgments cited at the bar, it may not be possible for us to notice each judgment and discuss and distinguish the same on facts of the present case. It is trite law that a precedent is an authority for what it actually decide and not what can be logically deduced therefrom. It is also well-settled that ratio of a judgment must be understood having regard to facts situation obtaining therein. In order therefore to cull out the ratio of a judgment, the law laid down therein has to be ascertained by analysing the

material facts and the issues involved in the case and argument of both the sides. What is held in a given case should be read with reference to facts situation of that case in the context of particular statutory provision interpreted by the court. It has therefore been often reiterated as a principle on the law of precedents by the Hon'ble Supreme Court that a decision cannot be relied on in support of a proposition which it did not decide and that the courts should not place reliance on decisions without discussing as to how the factual situation of the case before it fits in the facts situation of the decision on which reliance has been placed. A little variance and difference between facts as also in the position of law and the relevant rules may make a whole deal of difference in the precedential value of the judgment cited before the court. We would therefore refer to only such of the judgments which we consider nearest on the point and relevant for deciding the controversy involved in the present case.

**Validity of Note below 'Schedule Technical':-**

Core of the controversy that lies in the first question is whether those screened on the basis of the provisions contained in the Note below 'Schedule Technical' should be extended the benefit of counting period of ad-hoc service rendered by them prior to their screening and regularisation and in the second question whether those who acquired the qualification of 'AMIE' would be entitled to count the period of their service rendered prior to acquisition of such qualification for the purpose of eligibility of 'three years total experience of service' so as to be eligible for promotion to the post of Project Engineer (Sr.) as per the provisions contained in column 6 of Sr.No.2 of the 'Schedule Technical'. A related and the third question would be whether a diploma holder upon acquiring qualification of 'AMIE' would be placed in the seniority list of Project Engineers (Jr.) below degree holders available as on the date of their acquiring such qualification. In so far as second

and third question are concerned, we are deciding the controversy on the basis of the extant rules. Regarding the first question about screening and regularisation of ad-hoc /temporary /officiating Project Engineers (Jr.) and consequential grant of seniority benefits of that period, however, objection has been raised that though the Note below 'Schedule Technical' has been introduced pursuant to the Resolution No.124.12 of the Board, but it has so far not received approval of the State Government, therefore in terms of Section 15 read with Section 53 of the Act of 1970 this cannot be treated as part of the Regulations and, therefore, cannot be acted upon.

We may in this connection usefully refer to the judgment of the Hon'ble Supreme Court in High Court of Gujarat and another Vs. Gujarat Kishan Mazdoor Panchayat and others : (2003) 4 SCC 712 in which Hon'ble Supreme Court upheld appointment of President of the Industrial Court made on the basis of recommendations of the Standing Committee of the

High Court of Gujarat as per the eligibility criteria for such appointment incorporated in the draft recruitment rules framed by the High Court at the request of the government, which were then pending approval of the government. In para 27 of the judgment, their lordships categorically held that the rules which were in the draft stage can be acted upon provided there is a clear intention on the part of the government to enforce those rules in the near future. This was so held by the Hon'ble Supreme Court while reiterating its earlier view in Vimal Kumari Vs. State of Haryana and others : (1998) 4 SCC 114 in which case draft rules prepared in the year 1983 were not approved by the government for more than a decade. It was held that it was open to the government to regulate the service conditions of the employees for whom the rules were made even if those rules were in their “draft stage” provided there is clear intention on the part of the Government to enforce those rules in the near future but if intention was not to notify the rules at all, recourse to draft rules cannot be taken. Although,

in the present case the Note below 'Schedule Technical' of the Regulations was sent to the government for its approval way back on 28/05/1986 and if the intention of the government in the facts of the present case would have been of not approving such rules, it would have certainly disapproved of the same at any time in between. On the contrary, the government by its conduct has acquiesced in favour of adoption of those rules. The Rajasthan Housing Board has been treating this Note for all practicable purposes as part of the Regulations. It is significant to note that the Note below the 'Schedule Technical' has all along been acted upon by the Board, large number of engineers were screened and regularised in service, assigned seniority according thereto and were even conferred promotion. If now at this stage we were to hold that even though the Board had the competence to frame the aforesaid regulations in the shape of Note but could not act upon it till it was approved by the Government, it is likely to result in unsettling the settled position causing great prejudice to the

career of large number of employees who were appointed on ad hoc/temporary/officiating basis and were eventually screened and regularised and granted promotion.

In this connection, we may also refer to the judgment of the Hon'ble Supreme Court in Abraham Jacob and others Vs. Union of India : (1998) 4 SCC 65 where the Government of India sought to amend the originally framed rules vide OM dated 22/12/1959 which provided for filling up the posts of Assistant Engineers in civil Department of the Post and Telegraph wing, making provisions for filling up 50% of such posts by promotion in the draft recruitment rules prepared in the year 1969. Draft rules were approved in 1976. Ad-hoc promotions were made from 1969 to 1976 which were regularised in 1978 by convening a DPC which assessed the merit of the ad hoc promotees and seniority of promotees was determined on that basis. It was held by the Hon'ble Supreme Court that draft rules making promotion for the first time for 50% promotion quota could be

acted upon to make promotion which were finalised later.

But then, this argument is required to be examined in the light of the fact that though the provisions of Section 53 of the Act of 1970 required the Board to seek previous sanction of the State Government but in the peculiar facts of the present case, this is also an undeniable fact that the aforesaid Resolution was passed by the Board as far as back on 28/04/1986 and was acted upon for screening of the ad-hoc /temporary /officiating Project Engineers (Jr.) and grant of consequential benefits e.t.c. Notwithstanding the requirement of the previous sanction of the Government, the fact remains that the Regulations of 1976 were amended so as to provide for screening of such ad-hoc /temporary /officiating employees for determination of their inter-se seniority on the length of continued service and providing that they shall rank junior to those appointed in accordance with the Regulations. The Government on its part even though

it had received the reference of the Board way back in the year 1986 never disapproved of such provision and, therefore, on facts it is evident that the aforesaid Note introduced by way of amendment was not only allowed to be made part of the Regulations but was permitted to be given effect to and acted upon and all these actions had the tacit approval of the Government which can be inferred from the attending circumstances.

We are not impressed by the argument advanced before us that since unlike in other set of service rules, clause 6 of the Regulations does not provide for screening as one of the modes of recruitment, there being only five modes specified therein, screening and consequential regularisation of ad-hoc /temporary / officiating Project Engineers (Jr.) being contrary thereto, would be illegal. Howsoever we may criticise poor draftsmanship of the Regulations and improper placement of the relevant provisions as a Note below 'Schedule Technical', which it would have been ideal if incorporated in

the main body of the Regulations, the fact remains that the Note below 'Schedule Technical' has been introduced by the same body i.e. the Rajasthan Housing Board in exercise of the same powers contained in Section 53 of the Act of 1970 which it exercised while framing the main Regulation of 1976. The Note below 'Schedule Technical' of the Regulations of 1976 should therefore be taken to have been validly framed and made part of the Regulations of 1976.

**Question No.1:-**

The first question that we have formulated is whether the ad-hoc/temporary Project Engineers (Jr.) screened and regularised by virtue of clause 3 of the Note below 'Schedule Technical' are entitled to count the period of services rendered by them in that capacity for the purpose of seniority and experience for eligibility. But before we proceed to discuss the facts and the rules of the present case

so as to pronounce upon the arguments raised, we would like to refer to some of the judgments of the Hon'ble Supreme Court cited at the bar.

In a recent judgment delivered by the Hon'ble Supreme Court in K.Madalaimuthu and another Vs. State of T.N. and others : (2006) 6 SCC 558 it was held by their lordships that seniority of a person appointed temporary to a particular post without reference to the recruitment rules can be counted only from the date on which his services are regularised.

In Keshav Chandra Joshi and others Vs. Union of India and others : AIR 1991 SC 284 in the context of a dispute between the promotees and direct recruits, it was held by their lordships of the Hon'ble Supreme Court that seniority would be counted from the date of substantive appointment  It was further held that ad-hoc or fortuitous appointments on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority,

even if the appointee was subsequently qualified to hold the post on a regular basis. Doing so would be contrary to the equality enshrined in Article 14 read with Art.16(1) of the Constitution of India as that would amount to treating unequals as equals.

In Santosh Kumar and others Vs. G.R. Chawla and others : (2003) 10 SCC 513 the Hon'ble Supreme Court while considering the question of determination of seniority of ad-hoc employees whose services were later regularised held that ad-hoc appointments cannot be termed as substantive appointments. They were in the nature of stop-gap or fortuitous appointments and, therefore, the period of ad-hoc cannot be counted for the purpose of seniority. Such ad-hoc appointees whose services were regularised were entitled to be placed below the direct recruits appointed prior to their regularisation.

In Dr. Anuradha Bodi Vs. Municipal Corporation of Delhi : AIR 1998 SC 2093, the Hon'ble

Supreme Court while considering the dispute of seniority held that where initial appointment was made only on d-hoc basis and not in accordance with rules, officiation in such post cannot be taken into account for fixation of seniority.

Hon'ble Supreme Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others : (1990) 2 SCC 715 in the context of a dispute of seniority between direct recruits and promotees held that where initial appointment was not made by following procedure laid down by the rules but if the appointee continues in the post uninterruptedly till regularisation of his service in accordance with the rules, the period of officiating service will be counted. But, where initial appointment is only ad hoc, made as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the present case, the appointment of ad/temporary employees was not made in accordance with the rules

or by following any regular mode of recruitment and in fact, the amendment in the rules had to be introduced with object of regularizing their services by way of screening. Service rendered by them in ad hoc /temporary /officiating basis therefore cannot be counted for seniority.

In G.S. Venkat Reddy and others Vs. Govt. of A.P. and others : 1993 Supp.(3) SCC 425, their lordships of the Hon'ble Supreme Court had the occasion to consider seniority dispute between the temporary graduate engineers whose services were later regularized and Supervisors upgraded as Junior Engineers on acquiring degree. Special qualifying test was held for regularising the temporary appointments but the respondents were either found ineligible or had failed to appear therein. Their services were later regularised by order of the government which provided that their regularisation shall take effect from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the

date of temporary appointment, whichever is later. The dispute was between those who were appointed as junior engineers and supervisors who upon acquiring degree were described as junior engineers and those recruited through P.S.C. on the basis of limited recruitment under the rules. It was held that those recruited through PSC can be said to be direct recruits covered by the expression 'last regular appointments' as contemplated in the government order and entitled to seniority accordingly.

It may be noted that those regularised by recourse to screening under clause 3 of the Note aforesaid owe their birth into the cadre of Project Engineer (Jr.) to the aforesaid clause 3. Clause 3 (c) provides that the inter-se seniority of persons appointed under this provision shall be determined on the basis of their length of continuous service. Seniority of the employees of that category vis-a-vis those who were screened and regularised with them shall have to be therefore determined on the basis of length of service. There is no dispute

about that. The dispute however is about the sub-clause (d) of clause 3 in that those who have been screened and regularised have taken exception to this provision which provides that the persons appointed by the process of screening shall rank junior to those appointed in accordance with the prescribed manner as per the Rules. In other words, they claim that upon regularisation, their appointment should relate back to the date of their initial appointment whereas, the aforesaid clause 3 (d) provides that they shall rank junior to Project Engineers (Jr.) already recruited in the manner prescribed under the rules by that time. This argument is based on the ground that there is no qualitative difference between the kind of experience gained by two set of employees whether appointed on regular basis or on ad-hoc /temporary /officiating basis and that both of them are interchangeable and inter transferable posts. Reliance in this connection has been placed on the case of Vijay Singh Deora (supra) in which the Hon'ble Supreme interpreted Rules, 2, 6 and 27 of

the Rajasthan Engineers Subordinate Service (Engineering Branch) Rules, 1967. In that case, the graduate engineers were appointed temporarily as Junior Engineers till availability of regularly recruited persons. However, no regular appointment took place before they were screened and confirmed. Subsequently, diploma holders were also appointed on regular basis but they later acquired degree qualification. It was therefore held that the temporary appointees, being qualified at the time of their initial appointment, were entitled to seniority from the date of availability of substantive vacancies irrespective of the fact that they were confirmed subsequently and diploma holders were entitled to seniority from the date of acquiring degree qualification or availability of substantive vacancy, whichever is later. In the aforesaid case, sub-rule (1-A) of Rule 6 which was brought by amendment dated 7/12/1985, provided that if a diploma holder Junior Engineer attains the qualification of BE (Civil)/Mechanical /Electrical)/, or 'AMIE', he shall be entitled on

his application and subject to availability of vacancy, to be appointed as Junior Engineer (degree holder), by transfer against the quota of direct recruitment but in that case his seniority amongst the Junior Engineers (degree holders) shall be determined from the date of occurrence of vacancy against which such Junior Engineer has been appointed on the post of Junior Engineer (degree holder) and one-third of his previous experience shall be counted as experience on the post of Junior Engineer for the purpose of promotion to the next higher post. Ratio of that case however cannot be applied to the present case because when the appointments of the Project Engineers (Jr.) screened and regularised by recourse to clause 3 of the Note below 'Schedule Technical' were not made by any acceptable mode of recruitment but, on the basis of stray applications and therefore, they cannot be held entitled to count seniority for entire length of their service i.e. even prior to screening. Besides, when they owe their regularisation and encadrement in the service to the aforesaid clause 3

which had proposed a composite scheme of regularisation, inter-se seniority and seniority vis-a-vis pre-existing employees, they have to accept such scheme either as a whole or not at all. When they owe their very birth in the cadre to the aforesaid clause 3, they cannot selectively accept one part of the said clause and not the other part.

We may in this connection usefully refer to the judgment of the Hon'ble Supreme Court in Indu Shekhar Singh & Ors. Vs. State of U.P. & Ors. : 2006(8) SCC 129 wherein employees of UP Jal Nigam were deputed on service to Ghaziabad Development Authority on their own request. Although the rules did not provide for appointment by way of transfer but they were appointed on regular basis in the services of Ghaziabad Development Authority pursuant to an order issued by the Government of U.P. in exercise of its residuary powers and an offer was given to them for absorption subject to the condition that they would not be entitled to count their past service for the purpose of seniority.

Having been absorbed and appointed however, they challenged the condition of absorption. Hon'ble Supreme Court held that once having exercised the right of option, they could not be allowed to turn around and contend that the condition was illegal.

In the facts of the case therefore, we find nothing obnoxious in clause 3(d) which provides that employees who were screened shall rank junior to those appointed in accordance with the prescribed manner as per extant rules.

Now, having held that Project Engineers (Jr.) who were regularised in service by way of screening are not entitled to count their seniority prior to the date of their regularisation and in other words, period of their ad-hoc/temporary/officiating service would not count towards their seniority, we have to decide whether the experience which they gained while working in that capacity would be countable for the purpose of eligibility of “three years' total experience of service“ or “seven years' total

experience of service“, as the case may be, as prescribed in column 6 of Sr.No.2 of the 'Schedule Technical' of Regulations of 1976. This issue also need to be examined on the basis of applicable rules on the subject.

Except for what has been provided in clause 6 of the Regulations, no other provision is available in the Regulations of 1976 which may throw any light on the question of eligibility. It is true that eligibility cannot be confused with seniority but at the same time, it is equally true that one who is not yet confirmed/permanent on the feeder post would not be eligible for promotion and in view of our aforementioned conclusions would not be entitled to count services rendered by him on ad-hoc /temporary / officiating basis towards seniority on such post. Clause 9(a) provides that the first promotion of eligible persons to the higher post shall be made on the basis of seniority cum merit and clause (d) also provides that while considering promotions on the basis of merit with due regard to seniority, list of

senior most employees eligible for promotion not exceeding five time the number of vacancies would be taken into consideration. Clause 9(b) also provides that seniority of each candidate shall be prepared and maintained. Therefore, the moot question would be whether one can count the period of experience acquired at the time when he was not substantively appointed on such post and, therefore had not become member of the service consequently, entitling him to placement in the seniority list forming basis for further promotion.

The Constitution Bench of the Hon'ble Supreme Court in the Direct Recruits case albeit in the context of a dispute between direct recruits and promotees, had the occasion to consider this very question. Their Lordships in para 13 of the report considered earlier judgment of the Hon'ble Supreme court in S.B. Patwardhan Vs. State of Maharashtra : (1977) 3 SCC 399 in which it was held that the period of continuous officiation by a government servant, after his appointment by following the

rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter-se seniority has to conform to the principles of equality spelt out by Articles 14 and 16 of the Constitution of India. It was held that “if an appointment is made by way of stop gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post

uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary."

In R.S. Garg Vs. State of U.P. and others : (2006) 6 SCC 430, the relevant rule provided for promotion to the post of Deputy Director of Factories on the basis of seniority, amongst those substantively appointed Assistant Directors of Factories who have put in atleast five years service as such on the first date of the year of selection. It was held that experience gained in the post of Assistant Director consequent to ad-hoc appointment made without selection by the P.S.C. would not be counted for the purpose of eligibility of promotion.

Coming back to the facts of the present case, we find that mere use of the word “total experience of service” by itself would not be determinative of the countability of the experience and due regard shall have to be given to the mode and the nature of appointment to decide as to if experience acquired on the basis of such appointment would be reckonable towards the total experience.

Much of the arguments which have been made at the bar in favour of counting such experience towards eligibility are based on interpretation of word “total”, the language used in the 'Schedule Technical' of the Regulations by the rule making authority while providing “three years total experience of service” / ”three years of total experience of service” as the case may be. Argument was further advanced that there can be no qualitative and quantitative difference between the kind of experience which one acquires while working on ad-hoc/temporary/officiating basis and on regular basis on the posts held by them are interchangeable

and intertransferrable. This argument though at the first blush appears to be attractive but on deeper examination is found to be hollow. In the facts of the case, when we find that appointment of those screened and made regular were made on stray applications and otherwise than by any acceptable mode of recruitment and almost at the same time when the process of regular recruitment had also been initiated, would it therefore be appropriate to treat them at par with those appointed on regular basis is a question which is to be interpreted in the context of the aforesaid provisions.

We are, therefore, in favour of giving contextual interpretation to the Regulations, its Schedule and Note below the 'Schedule Technical', which is one of the basic rules of interpretation while construing “total service of three years experience” for, restricted and literal interpretation of that rule is likely to result in incongruous and absurd consequence of an ac-hoc/temporary employee being made eligible for

promotion soon upon his screening and regularisation and in a given case even before his senior in the feeder cadre has become eligible for such promotion. This would create an anomalous situation where the same experience although would not be countable towards seniority but would be valid for the purpose of eligibility for promotion. In other words, such service would not valid for one purpose but at the same time, it would be valid for another purpose. And when seniority is one of the essential concomitants of edibility for promotion, period of service which does not form basis for grant of seniority, eligibility for promotion based on experience of such service can not be in law founded thereupon, for seniority and eligibility both together form basis of promotion.

We are not inclined to uphold the argument that regularisation of the ad-hoc / temporary /officiating Project Engineers (Jr.) consequent upon their screening would be impermissible in law and is liable to be declared illegal and unconstitutional

in view of the ratio of Constitution Bench Judgment of the Hon'ble Supreme Court in Secretary, State of Karnataka and others Vs. Umadevi and others : (2006) 4 SCC 1. Their Lordships in para 7 of the said judgment clearly noticed cleavage of opinion in the High Court of Karnataka in two set of appeals based on the difference in approach in two sets of judgments of the Supreme Court. The conflict related to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim was based of their significant length of service. The Hon'ble Supreme Court therefore by this authoritative pronouncement discussed and decided upon the scope of the High Courts under Article 226 of the Constitution to issue writ of mandamus directing the State and its instrumentalities to regularise those working on ad-hoc /temporary daily rate /casual basis. Regularisation of service by way

of screening under the relevant rules has always been accepted as one of the modes of recruitment and was not the subject-matter of examination in Umadevi supra.

**Question No.2:-**

Adverting now to the second question whether Project Engineers (Jr.) recruited on the basis of diploma upon their acquiring qualification of 'AMIE' are entitled to count the experience of service prior to acquisition of such qualification for the purpose of eligibility of three years experience for promotion. Much stress has been laid on the argument that Project Engineers (Jr.) initially recruited as diploma holders acquiring qualification of 'AMIE' are not entitled to count their earlier experience for the purpose of eligibility of three years' total experience of service for promotion. Propounders of this argument heavily relied on the judgment of the Hon'ble Supreme Court in N.Suresh Nathan and another Vs.

Union of India and others : 1992 Supp. (1) SCC 584 in which the dispute was relating to promotion to the post of Assistant Engineers in PWD where junior engineers possessing the degree in civil engineering with three years experience were eligible for promotion under the rules. Contest was between diploma holders and degree holders. Diploma holders claimed that they were entitled to count the period of service rendered by them prior to their acquiring degree. Hon'ble Supreme Court observed that there was sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma holder Junior Engineers who obtained the degree during service, the period of three years' service in that grade for eligibility for promotion as degree holders commenced from the date of obtaining the degree and the earlier period of service as diploma holders was not counted for this purpose. In those facts while interpreting the relevant rules, it was held by their Lordships that three years service would be counted from the date

of obtaining the degree.

The Hon'ble Supreme Court however sounded a discordant note on that proposition of law starting from M.B. Joshi and others Vs. Satish Kumar Pandey and others : 1993 Supp. (2) SCC 419. In that case, while interpreting M.P. Public Health Engineering (Gazetted) Service Rules, 1980 which provided that the graduate Sub-Engineers completing eight years service would be eligible for promotion against their quota to the post of Assistant Engineers. Their Lordships while distinguishing N.Suresh Nathan supra held that if entire experience of diploma holders acquiring degree is ignored, it would defeat the very purpose of incentive for acquiring additional qualification and make the advantage of acceleration in promotion in eight years nugatory for all practical purposes. It was therefore held that the diploma holders acquiring degree would be entitled to count entire length of their service as Sub-Engineers irrespective of the date of their acquiring degree qualification.

This very view was reiterated by the Hon'ble Supreme in Satpal Antil Vs. Union of India and another : (1995) 4 SCC 419 in which it was held that inter-se seniority of Engineers (Civil) in telecommunication department would be determined on the basis of their length of service irrespective of date of passing the qualification examination. In Vijay Singh Deora and others Vs. State of Rajasthan and another : (1997) 3 SCC 118 in which Division Bench Judgment of this court was under challenge. Proviso to rule (1A) to rule 6 of the Rajasthan Engineering Subordinate Service (Irrigation Branch) Rules, 1967 to the extent it provided that diploma holders junior engineers upon acquiring degree transferred against the quota of direct recruitment of Jr.Engineers (degree) would be entitled to count 1/3$^{rd}$ of his previous experience for the purpose of eligibility of promotion to the next higher post, was declared illegal and struckdown by this court. Their Lordships of the Hon'ble Supreme Court however reversed the judgment and held that they were

entitled to count 1/3rd period of their service rendered while they were holding the diploma. D.Stephen Joseph Vs. Union of India and others : (1997) 4 SCC 753 was a case in which Hon'ble Supreme Court while reiterating its earlier view in M.B. Joshi's supra rejected the plea that three years regular service prescribed in the grade of junior engineer for promotion as Assistant Engineers against 50% quota of graduate Engineers was reckonable only from the date of acquisition of degree.

Hon'ble Supreme Court in Sheshrao Jangluji Bagde Vs. Bhaiyya : 1991 Supp (1) SCC 367 interpreted Rule 3 of the relevant rules regarding promotion from amongst Senior Geologists. The appellant who was senior-most in the seniority list of Sr. Geologist applied for appointment on the post of Deputy Director in response to the notification dated 21/5/1983 for direct recruitment conducted by the Maharashtra Public Service Commission but he was not called for interview on the ground that he

acquired Post Graduate degree in Geology in the year 1982 and therefore did not possess necessary qualification of 10 years' practical experience. Argument was raised that the qualification and experience being enumerated in two different clauses of Rule 3, the required experience need not relate to the period after acquiring basic educational qualification of Post Graduate Degree of Geology. This contention was rejected by the High Court. Appellant was not recruited but subsequently when one new post was created and provision for promotion was also made in the rules and the appellant was eventually promoted. His promotion was again challenged before the High Court on the ground that even for promotion, the candidate should possess not only a Post Graduate Degree in Geology but also 10 years' experience posterior to such acquisition of Post Grade degree and, therefore, appellant was not qualified to be promoted. The Division Bench of the High Court following its earlier view quashed the selection and promotion of the appellant. When the judgment of the Division Bench was challenged before

the Supreme Curt, their Lordships held that on interpretation of the rules prior to its amendment, the view taken by the High Court in its earlier judgment did not call for any interference. It was held that “normally when we talk of an experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required and, therefore, necessarily will have to be posterior to the acquisition of the qualification. However, in the case of a promotion the same interpretation may not be just or warranted. It would depend on the relevant provisions as also the particular type of experience which is required.”

In A.K. Raghumani Singh and others : Gopal Chandra Nath and others : (2000) 4 SCC 30 the matter regarding rules relating to promotion to the post of Superintending Engineers in various department of Manipur PWD came up before Hon'ble Supreme Court for consideration. Executive Engineers and Surveyors possessing degree with six years' regular service in

the grade were eligible for promotion. The respondent obtained degree of 'AMIE' in 1989. In the High Court, the government opposed his claim on the ground that eligibility criteria required six years' regular service after educational qualification was obtained. The High Court decided otherwise. Certain colleagues of the respondent therein challenged judgement of the High Court before the Supreme Court and the Hon'ble Supreme Court while deciding the matter held that the relevant rule required that the officers possessing degree “with six years' regular service in the grade” are eligible for promotion and the words “with” has been defined diversely, the meaning depending on the context in which it is used but when it is used to connect two nouns it means “accompanied by' having as an addition or accompaniment, frequently used to connect two nouns, in the sense 'and' – 'as well'.

In yet another case of Anil Kumar Gupta and others Vs. Municipal Corporation of Delhi and others

: (2000)1 SCC 128, a three Judge bench of the Hon'ble Supreme Court reiterating its earlier view in the aforesaid case held that the experience gained with diploma as well as degree qualification was countable towards two years prescribed in the advertisement for appointment on the post of Assistant Engineers (Civil) in the Municipal Corporation of Delhi.

Chandravathi P.K. and others Vs. C.K. Saji and others : (2004) 3 SCC 734, was again a case where the question which came up before a three Judge bench of the Hon'ble Supreme Court was as to what weightage would be given to the diploma holders on acquisition of higher qualification. In the relevant rules, option was given to diploma holders Assistant engineers who acquired higher qualification while in service for promotion either in the category of degree holders or diploma holders. Their Lordships held that diploma and degree holders were entitled to claim weightage for the services rendered by them prior to their

acquiring qualification of degree, in the matter of promotion or transfer to higher posts when specific quota was fixed for promotion.

Hon'ble Supreme Court in recently delivered judgment in **Shailendra Dania & Others Vs. S.P. Dubey & Others : JT 2007(5) SC 487** held that the view taken in N.Suresh Nathan was distinguished in subsequent cases such as M.B. Joshi supra, on the premises that N.Suresh Nathan was mainly decided on the basis of past practice and because the rule under consideration in N.Suresh Nathan was entirely different than the one which the court was considering in M.B. Joshi. Their lordships in Shailendra Dania held that it is not correct to say that the decision rendered in N.Suresh Nathan was based on past practice and that the “Court, in fact, has considered and interpreted the relevant service rules and then found that such an interpretation is fortified from the practice followed in that department”. Their lordships further held that even in Anil Kumar Gupta (decided by three judge bench)

view taken that N.Suresh Nathan supra was decided mainly on the basis of practice followed in the department was not correct reading of that judgment because that case was essentially decided on interpretation of the rule. It appears that yet another three Judge bench judgment in Chandrawati P.K. Supra, was not brought to notice of the Court in Shailendra Dania. In any case, interpretation in N.Suresh Nathan and the concurrence therewith by Shailendra Dania supra is essentially based on the language of the relevant rule which came up for consideration of the court. That is the view which their lordships reiterated in Shailendra Dania again on the basis of the interpretation of the rule relating to promotion of Junior Engineers working with Delhi Development Authority to the post of Assistant Engineer. Their lordships on interpretation of the relevant rules in para 40 of the report held that if the “effect and intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of

Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers, Degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service."

Having noticed further requirement of possessing two years' experience in addition to diploma for recruitment on the post of Junior Engineer, their lordships in this context further held that when the degree with three years' experience and diploma with eight years' experience has been provided as the eligibility for promotion to the post of Assistant Engineer, this would indicate qualitative difference in the service rendered as degree holder junior engineers and diploma holders junior engineers because the rules

provided for different service experience for diploma holders and degree holders which distinction is maintained under the rules in further promotion to the post of Executive Engineer also. This interpretation obviously was based on the language of the rules which came up for consideration of the Hon'ble Court and on that basis earlier judgments of the Supreme Court in M.B. Joshi, D.Stephen Joseph, Anil Kumar Gupta and A.K. Raghumani Singh were distinguished by their lordships in para 33 of the report holding that those judgments “are based on the interpretation of the respective rules called in question, giving meaning to the words used in the context of the entire scheme governing service conditions and the facts involved in each case”. In fact, reading para 30 of the report in Shailendra Dania would make it clear that interpretation of a given rule would always depend upon the kind of language used therein which is what was held by their lordships in para 33 of the report which we consider appropriate to quote for the facility of reference:-

“Thus, we are required to decide the matter on the basis of the entire scheme of the rules, the facts and circumstances at the relevant time and the rules called in question before us, independently giving meaning to the words, the principle involved and the past practice, if any which is in consonance with the interpretation given by us to the rule.”

Now coming back into the facts of the the present case, we must observe that interpretation of the rule would always be based on the intention of the rule making authority which is reflected in the kind of language used therein. In the present case, as is evident from clause 6 of Sr.No.2 of the Schedule Technical that the rule requires that the post of Project Engineer (Sr.) is “to be filled in by promotion from amongst the P.E. Jr's who are degree holders with 3 years total experience of service” and when this is interpreted keeping in view the scheme of the rules, it would be evident

that the promotion is intended to be conferred on Project Engineer (Jr.) who are diploma holders with three years' total experience of service. Unlike in many other set of the rules where the junior engineers are indicated as “diploma holders junior engineers” and “degree holders junior engineers” or “degree holder junior engineer working in the grade” or “diploma holder junior engineer working in the grade”, what is expressed in the present set of the rules is Project Engineer (Jr.), who are degree holders with three years' total experience of service. Use of the word “total” is therefore quite significant which denote the amount of experience which is not gradable and which reflects the 'total' 'entire' or 'whole' of the experience and therefore should include the experience starting from beginning of service to the end, subject, of course, to the appointment being substantive in nature. Since the words “three years' total experience” is qualified by the words “experience of service” it has to be therefore experience of service which is substantive in nature. Moreover, in

the rule which we are called upon to interprete, there is no such additional requirement, as was there in Shailendra Dania supra that the diploma holders at the time of initial recruitment on the post of Junior Engineer should also have additional experience of two years. Besides, in the present case, recruitment at the entry level on the post of Project Engineer (Jr.) is by a common process of selection appointment being offered on the basis of common merit which forms the basis of common seniority. The judgment of the Hon'ble Supreme Court in Shailendra Dania is distinguishable on facts and judgments rendered by the Hon'ble Supreme Court in Anil Kumar Gupta and Smt.Chandrawati P.K. Saja and other judgments referred to above are nearer on the point for interpretation of the rules in the present case.

Granted the fact that recruitment in these cases at the entry point in 'Schedule Technical' made on the post of Project Engineer (Jr.) is by a common process of selection and such a direct recruitment when it was made was common for both

diploma holders and degree holders. Source of recruitment as indicated in column 3 of Sr.No.1 of the schedule is also provided as 97% of the posts to be filled in by direct recruitment without there being any separate quota for either degree or diploma holders, though 3% of the posts have been ear-marked for the Board employees. Qualification prescribed in column 4 is both degree and diploma in civil engineering. At the time of initial recruitment therefore there are no distinguishing birth marks. Inter-se seniority of those recruited in the common selection is required to be prepared as per clause 10 of the Regulations which is based on their placement in merit. And when the merit is common, if eventually diploma holders acquire higher placement in merit, he shall by reason of that fact alone that he acquires degree at a later point of time cannot be put to a disadvantageous position. Although one does not know as to what is the method of preparing the merit but in absence of any material brought before us we are inclined to think that in a given situation even the diploma holders

may secure a higher placement in the merit than a degree holder. Besides, the rules provide that preference will be given to the persons having two years experience in design and construction of building and that may also be a additional factor for extra weightage being given to a diploma holder. There being no distinguishing birthmarks at the time of recruitment therefore, no distinction can be made between diploma holder and degree holder just because at a subsequent point of time the diploma holder acquires degree. It would also be significant to note that both diploma holders and degree holders hold the same post with similar responsibility and there may be situation where a diploma holder may be asked to hold a onerous responsibility as compared to a degree holder. And all said and done, this much is not denied that they both hold interchangeable and inter-transferrable posts.

In view of our analysis of the settled proposition of law, we are of the considered view that Project Engineers (Jr.) diploma holders upon

acquiring degree /qualification of 'AMIE' would be entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of “three years total experience of service” for promotion to the post of Project Engineer (Sr.). This conclusion is however subject to our finding on the first question as indicated hereinabove that service of diploma holders Project Engineers (Jr.) would be countable only after they have been appointed in accordance with the Regulations of 1976 and regularised in service upon being adjudged suitable following their screening by virtue of clause 3 of the Note below 'Schedule Technical'.

**Question No.3:-**

Now, coming to the third question which in fact has arisen on account of the judgement rendered by the learned Single Bench while reviewing the judgement in K.K. Dixit's case. Learned Single Bench while deciding the writ petition of K.K. Dixit vide

judgment dated 7/7/1993 held that period of experience gained by Project Engineers (Jr.) while working on ad-hoc/temporary/officiating basis after their screening and regularisation cannot be taken into account for the purpose of seniority and eligibility for promotion. In the review order, however, it was directed that the Housing Board shall prepare a separate seniority list of degree and diploma holders Project Engineers (Jr.) by placing the names of such diploma holders who acquired 'AMIE' below degree holders of that year in the seniority list. Neither any rule nor any instruction has been brought to our notice to show that separate seniority list would be required to be prepared for degree and diploma holders. On reading of clause 10 and the 'Schedule Technical' including the Note there below, no such intention of the rule making authority is discernible. In fact, the recruitment of Project Engineers (Jr.) which is the lowest post in the 'Schedule Technical' is made on the basis of a common selection and which in turn is based on merit of the candidates which forms the

basis for preparation of their seniority. When the Regulations do not rule out the possibility of a diploma holder acquiring higher placement in merit and consequently in the seniority list, how possibly can he be pushed down in seniority just because he acquired degree thereafter. Such interpretation would have severe consequences for those diploma holders who even though were selected earlier than certain degree holders but would be placed below them just because they later acquired degree. Whether the placement of a diploma holder Project Engineer (Jr.) is higher or lower than his counter part degree holder, such adverse effect of his acquiring degree at a subsequent point of time would be difficult to appreciate and still more difficult to approve. His placement in the merit should therefore remain uninfluenced by the factum of his acquiring degree. It is in this context that we have to test the correctness of Resolution No.6 passed by the Rajasthan Housing Board in its 77th Meeting convened on 17/4/1979. The Board by the aforesaid resolution resolved to equate seven years' total

experience of a diploma holder with three years' total experience of a degree holder supposedly based on the practice of placing the diploma holders acquiring 'AMIE' below pre-existing degree holders. This resolution when examined in the context of relevant provisions in the Regulations, it would be seen that while Regulation 9(b) provides that the seniority list for each category of employee shall be prepared and maintained, clause 10 provides that in the seniority amongst the persons recruited in the same year, the promotees will rank senior to those who are appointed by direct recruitment. Amongst the promotees, those who are appointed on the basis of seniority cum merit with rank senior to those who are appointed on the basis of merit with due regard to seniority. Inter-se seniority of those appointed on the basis of merit will be in accordance with their relative seniority in the lower cadre. This provision was supplemented by insertion of the Note below scheduled technical which provides that persons appointed by the process of screening shall rank junior to those appointed in

accordance with the prescribed manner as per rules. 'Schedule Technical' at Sr.No.1 refers to source of recruitment for the post of Project Engineer (Jr.) by direct recruitment. Such being the position of the rules, therefore, when degree holders and diploma holders can secure appointment in the same process of selection, there does not appear to be any valid basis for preparing separate seniority list merely based on the qualification. Unlike in the other set of service rules relating to various services where qualification of degree and diploma may form basis for separate selection and division of the cadre, the Regulations of 1976 does not authorise for any such separation of a cadre into two, one of Project Engineers (Jr.) diploma holders and other of Project Engineers (Jr.) degree holders. Much contrary to the so-called practice referred in resolution of the Board dated 17/4/1979, copy of the advertisement Ann.1 in the writ petition of KK Dixit issued in March 1988 for recruitment on the post of Project Engineer (Jr.) show that it was a common selection for both degree and diploma holders. When

appointments were given to degree and diploma holders on 21/4/1989 under the same process of selection, there was no question of their separate seniority. There had been in fact no segregation between them on the basis of qualification and any one of them could be posted against any post of Project Engineers (Jr.). Apart from the fact that the so-called practice of preparing separate seniority list for diploma holders and degree holders had no sanction of the rule, we are also not inclined to agree that this was a long standing practice with the Board to prepare a separate seniority list for diploma holders and degree holders and place such diploma holders who later acquired degree at the bottom of the seniority list of degree holders. On the contrary thereto, we find a common seniority list dated 11/8/1989 issued in relation to Project Engineers (Jr.) containing the names of both degree holders and diploma holders.

In fact, reference to the so-called practice in the resolution dated 17/4/1979 stands bellied if we go through the reply of the Housing Board to para 14

of the writ petition in K.K. Dixit's case where the Board itself pleaded that the diploma holders just because they acquired degree cannot be put in a disadvantageous position.

In so far as counting of service of a diploma holder by the resolution of the Board dated 17/4/1979 with three years experience of a degree holder is concerned, that can be accepted as valid for the purpose of promotion only because that has been accepted the basis for the purpose of eligibility of promotion in column No.6 of the 'Schedule Technical'. If the Regulations which have been framed by the Board in exercise of its power with the approval of the State Government and approval of the Regulations of 1976 was received from the Department of Urban Development and Housing of the Government vide government communication dated 30/11/1977 and the Regulations having not provided for categorisation of the cadre of Project Engineers (Jr.) on the basis of degree or diploma and rather provided for unified cadre of Project

Engineers (Jr.) at the entry point in 'Schedule Technical' with the course of recruitment being 97% by direct recruitment, no such bifurcation for the purpose of seniority alone can be sustained in law. Bifurcation made in the immediate higher cadre of Project Engineers (Sr.) has been made for the limited purpose of promotion by providing 20% quota of promotion for degree holders and 30% quota for diploma holders and the Board can legitimately prepare separate eligibility list of Project Engineers (Jr.) for promotion to the post of Project Engineers (Sr.) based on their qualification of degree or diploma, as the case may be and in doing so, may reckon their three years or seven years total experience of service respectively as the basis for inclusion of their names in the eligibility list for promotion.

Argument has been made that by virtue of clause 12 of the Regulations, the Board is competent to issue general instructions which are not inconsistent with the Act and the Rules and

Regulations for their interpretation or in giving effect to them or if any lacunae, inconsistency or anomaly is discovered in their application. But then, the clause 12 by itself provides that such general instructions cannot be inconsistent with the Act, Rules and the Regulations and, therefore, to the extent the general instruction such as the one contained in the aforesaid Regulation No.6 providing for placement of diploma holders upon acquiring degree/ AMIE at the bottom of seniority of the degree holders and thus recommending preparation of separate seniority list for degree holders and diploma holders being not consistent with the provisions contained in 'Schedule Technical' of the Regulations of 1976, would be to that extent void and in-operative in law.

We may in this connection refer to the judgement of the Hon'ble Supreme Court in Dilip Kumar Ghosh Vs. Chairman and others 2005(7) SCC 567 in which case the Hon'ble Supreme Court held that a Circular cannot over ride the rules occupying a

particular field. Somewhat similar view was taken by their Lordships of the Hon'ble Supreme Court in Dr.Rajinder Singh Vs. State of Punjab and others : (2001) 5 SCC 482 wherein the High Court held that the State Government even without amending the rules could declare  members of Punjab Civil Medical Service Class-II as PCMS Class-I. It was held by the Hon'ble Supreme Court that when the rules have not been amended so far and the government itself recognised that there were two classes of service, such service could not be equated without amending the rules. Their Lordships in para 7 of the judgement held as under:-

> “The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service

can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution."

In Tamilnadu Housing Board Vs. N.Balasubramanium : 2004(6) SCC 85, the Hon'ble Supreme Court was considering a case on the question of eligibility of promotion. Their Lordships held that in the event of conflict between executive instructions and statutory regulations regarding promotion to the post of Assistant Executive Engineer in Tamilnadu Housing Board, the statutory regulations fixing the criterion of eligibility as Junior Engineer with ten years' experience of service or Chief Draftsman/Head Draftsman with fifteen years of service would prevail over the executive instructions which provided that where feeder categories carried different pay scales and no quota was fixed for promotion, then persons in higher pay scale should be given preference. Chief Head Draftsmen and Head Draftsmen were getting higher scale of pay than Junior Engineers. It was

held that executive instructions could not be applied to give preference to them because they possessed less than the prescribed minimum length of service over eligible Junior Engineers. Otherwise, the eligibility criteria contained in the statutory Regulations would be rendered otiose.

In the present case therefore when the cadre of Project Engineers (Jr.) was a common cadre with direct recruitment as one of the modes of recruitment which was based on common selection and common seniority, there being no recognition for distinguishing birth marks in the cadre based on the educational qualification, preparation of separate seniority list merely on account of the fact that diploma holders later acquired qualification of degree would amount to treating equals unequally thereby discriminating against them which would certainly invite the frawn of Article 14 and 16 of the Constitution. The Regulations framed by Board with the previous sanction of the State Government does not provide for any such rule and so long as

such Regulations are not suitably amended so as to provide for separate seniority based on the qualification of degree and diploma, placement of diploma holder upon his acquiring degree at the bottom of seniority list of the degree holders in a separate seniority list cannot be sustained in law merely on the basis of so-called practice which manifestly run contrary to position of rule.

We are therefore of the considered view that as per the intention of the Regulations of 1976, common seniority list of Project Engineers (Jr.) is required to be prepared for diploma holders and degree holders who are both members of unified cadre with reference to the 'Schedule Technical' of the Regulations of 1976 on the basis of their substantive appointment and in the event of selection by screening from the date they are made substantive on such post and in case recruitment is made by any other mode, on the basis of the date of their substantive appointment in the service of Rajasthan Housing Board. We therefor hold that a diploma holder upon acquiring degree/'AMIE' would

continue to be entitled to hold the same placement in the seniority as he would have been having even when he was only a diploma holder and that his placement in the seniority list would remain uninfluenced by the factum of his acquiring qualification of 'AMIE'.

**RESULT:-**

In view of what we have held in the foregoing pages, while the Question Nos.1 and 3 formulated in the beginning of this legal discourse are answered in the negative but the Question No.2 is answered in the affirmative. Consequently, D.B. Special Appeal (Civil) No.67/1993 filed by Chandra Mohan Sahahan and others and D.B. Civil special Appeal (W) No.528/1993 filed by R.K. Bhakar and others are dismissed and the judgment passed by the learned Single Judge in the writ petition of K.K. Dixit and another dated 7/7/1993 is upheld but D.B. Special Appeal (Civil) No.64/1993 filed by R.K. Bhakar and others challenging the judgment of the learned Single Judge passed in Review Petition filed by K.K.

Dixit is allowed and the impugned judgment dated 21/9/1993 passed by the learned Single Judge is set-aside. D.B. Civil Special Appeal (W) No.689/1996 filed by R.C. Jain and others is allowed and the judgment of the learned single Judge dated 18/4/1996 impugned therein is set-aside. D.B. Civil Special Appeal (W) No.497/1994 filed by Faheem Ullah Khan and others is dismissed and the judgment of the learned Single Judge dated 21/4/1994 impugned therein is upheld. D.B. Civil Writ Petition No.20/1993 filed by Satyaveer Singh and D.B. Civil Writ Petition No.7063/1993 filed by Ranjeet Singh Godara are allowed and the Resolution No.6 dated 17/4/1979 passed by the Board is declared illegal and ultravires of Regulations of 1976 and Article 14 of the Constitution of India and therefore quashed and set-aside.

In view of prolonged pendency of these matters before this Court and protracted litigation spread over one and a half decade, we deem it appropriate to direct the Rajasthan Housing Board to revise and finalise the seniority list of Project

Engineers (Jr.) and Project Engineers (Sr.) undertaking the exercise of consideration of all concerned for promotions by convening D.P.C./review D.P.C. for higher posts and pass necessary promotion orders within six months from the date copy of this judgment is served upon them for compliance. It is however made clear that those promoted from earlier dates as a result of implementation of this judgment shall only be entitled to notional benefits of seniority, pay revision and increments etc.

All these special appeals and writ petitions stand decided in terms of the aforesaid directions though with no order as to costs.

**(MOHAMMAD RAFIQ), J.** **(S.N. JHA), CJ.**

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